RAJA LETCHUMI RAMARAJOO

v.

THE HONGKONG & SHANGHAI BANKING CORP.

SUPREME COURT, KUALA LUMPUR
LEE HUN HOE CJ (BORNEO)
MOHD. YUSOFF MOHAMED SCJ
AJAIB SINGH SCJ
[CIVIL APPEAL NO. 166/88]
20 FEBRUARY 1989

CIVIL PROCEDURE: *Mareva injunction - Withdrawal from bank account stopped - Alleged fraud in clearing of cheque - No evidence to show proceeds of cheque credited to account - Injunction set aside.*

The appellant/second defendant appealed against the decision of the High Court which dismissed an application to set aside a *mareva* injunction against the third defendant whereby the third defendant which was a bank was restrained from allowing the money standing to the credit of the appellant to be withdrawn. The respondent/plaintiff had alleged that the first defendant had fraudulently issued a cheque on the respondent's bank knowing that he did not have sufficient funds in his account. It was alleged that the third defendant had credited that sum of money to the appellant's savings account.

Held:

The proceeds of the first defendant's alleged fraud could not be traced with certainty to the appellant's account. The respondent did not tender any evidence to show that the proceeds of the cheque were credited to the appellant's savings account with the third defendant The injunction was dissolved.

[Appeal allowed with costs.]

Case referred to:

Chief Constable of Hampshire v. A. Ltd. & Ors. [1984] 2 WLR 954

For the appellant/second defendant - Hira Singh; M/s. Asbir, Hira Singh & Co.
For the respondent/plaintiff - Robert C.C. Liew; M/s. Azman Davidson & Co.

JUDGMENT

Mohd. Yusoff Mohamed SCJ:

In this appeal the learned Judge had dismissed the 2nd defendant's (now appellant) application to dissolve an interim injunction granted by him on 22 March 1982, against the 3rd defendant, restraining the 3rd defendant, United Malayan Banking Corporation of Kampar Branch, from parting with the balance sum of money standing to the credit of the 2nd defendant.

The injunction was granted on the basis of an allegation by the plaintiff, Hongkong & Shanghai Banking Corporation of Ipoh Branch, in the statement of claim that the 1st defendant had fraudulently issued a cheque No. 284004 for a sum of RM10,012.50 on the plaintiff's bank knowing that he did not have sufficient funds in his account with the plaintiff to cover the amount drawn. It is also alleged that the said cheque was cleared by the 3rd defendant's bank and credited the amount to the 2nd defendant's savings account there.

In her first application on 22 June to set aside the injunction, the 2nd defendant swore in her affidavit of 22 June 1982, that the balance sum of money in her savings account was a gift given to her to help care for her mentally retarded child of one and a half year old and that she had no knowledge of the allegation of fraud against the 1st defendant.

The learned Judge was not impressed by her affidavit and her application was dismissed.

On 26 August 1982, 2nd defendant applied again to dissolve the injunction. In support of this application she maintained that the sum of money in her savings account at the 3rd defendant's bank was a gift given to her but now said that it was given by her father to enable her to care for her sick child. She attached a medical specialist's report stating that the child had cerebral palsy and needed immediate medical attention wherefore she asserted that the money rightly belonged to her to use for treatment of her child. Her father Ramarajoo filed a separate affidavit in support of her contention.

The learned Judge ruled that there was no new ground put forward by the applicant and again he dismissed her application. Hence this appeal.

The injunction granted against the 3rd defendant is in the nature what is known as *Mareva* injunction, that is to freeze and seize the 2nd defendant's bank account where the plaintiff's claim appears likely to succeed so that the plaintiff is not deprived of his anticipated judgment. But the remedy has its limitations. Where the proceeds of crime could not realistically be traced with any degree of accuracy, the injunction is refused: see *Chief Constable of Hampshire v. A. Ltd. & Ors.* [1984] 2 WLR 954.

Before us, we were not satisfied whether the cheque No. 284004 for the sum of RM10,012.50 allegedly drawn by 1st defendant was actually credited to the 2nd defendant's account. There is no evidence to support this contention by the plaintiff. The inward clearing record of the said cheque was not produced in evidence neither any record showing the said sum of RM10,012.50 credited to 2nd defendant's savings account was shown to the Court. The learned plaintiff's Counsel could not help to explain this deficiency. For that reason we find that the proceeds of the 1st defendant's alleged fraud could not be traced with certainty to the 2nd defendant's account.

We feel that this fact was not drawn to the learned Judge's attention, otherwise his decision would have been different.

For these reasons we allowed the appeal. The injunction granted on 22 March 1982 is dissolved. Costs to the appellant here and below. Deposit to be refunded to appellant.

Also found at [1989] 1 CLJ 691